IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

CRL.A.No. 406 of 2005(B)

AGAINST THE JUDGEMENT/ORDER IN CRLP.156/2005 Dated 24/02/2005
CC.689/2001 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KODUNGALLUR

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APPELLANT: COMPLAINANT

AZEEZ, S/O.AHAMMED HAJI,
PUTHIYAVEETTIL, KAIPAMANGALAM, DIRECTOR,
INTEGRATED SPICES & FOOD PRODUCTS (P) LTD.,
NOW REPRESENTED BY ITS PRINCIPAL OFFICER,
MADHU MOHAN K.S.

BY ADV. SRI.N.P.SAMUEL
SRI.RUPESH V.R.

RESPONDENTS: ACCUSED & STATE

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1. T.S.KRISHNAN(MANI),
THOTTINGAL HOUSE, PROPRIETOR,
VIZHNU SUPPLIERS, CHALINGAD.

2. STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 28/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No. 406 of 2005

Dated this the 28th February, 2007.

J U D G M E N T

The complainant, the Director of a company, has preferred a complaint under Section 138 of the Negotiable Instruments Act, before the Judicial First Class Magistrate Court, Kodungallur, against the first respondent, the accused. The complainant was absent on the appointed date, and, therefore, the complaint was dismissed, and the accused acquitted. Hence, this appeal after obtaining leave of this Court.

2. The learned counsel appearing for the appellant submits that the Director of the Company was suffering from heart attack, and, therefore, he could not appear before the court below, on the appointed date. A medical certificate was also produced before the court below, along with the application to adjourn the case. Nevertheless, the learned Magistrate dismissed the complaint, submits the counsel. Hence, prayed that an opportunity may be given to the Company to prosecute the matter, as another Director who has filed complaint, after due authorisation, is now prosecuting the case.

3. After hearing both sides, and considering the facts at issue, I am of the view that an opportunity be given to the parties to agitate their contentions before the court below.

4. Hence, I set aside the impugned order, dated 22.12.2003, and restore C.C.No.689/2001, to the file of the Judicial First Class Magistrate Court, Kodungallur.

5. The parties shall appear before the court below on 29.3.2007.

6. The learned Magistrate is directed to dispose of the case, at the earliest, and in any case, within four months from the date of appearance of the parties before that court.

Criminal Appeal is allowed as above.

J.M. JAMES,
JUDGE

nj.